

REMARKS

Claims 38-74 are pending. By this Amendment, the Specification is amended to obviate minor informalities, remove duplicate paragraphs and to incorporate claim language into the Specification. For example, paragraph [0084] is amended to reflect language presented in original claims 1, 2 and 10. Claims 1-37 are cancelled and new claims 38-74 are added to obviate minor informalities, provide broader claim scope and/or provide claims better directed to certain business practices and embodiments. The new claims are directed to the same invention as the cancelled claims. For example, as with cancelled claim 1, new claim 38 is directed to a storage medium containing AVM values. No new matter is added. Reconsideration in view of the above amendments and the following remarks is respectfully requested.

Applicants appreciate the generous amount of time donated by Examiner Vig in a December 12, 2006 personal interview, as well as by Supervisory Primary Examiner Weiss in both a December 13, 2006 telephone interview and a December 20, 2006 interview, the substance of which are reflected in the following discussion.

The Office Action objects to claim 13 due to a minor informality. By this Amendment, claim 13 is cancelled thus obviating the informality, and withdrawal of the objection is respectfully requested.

The Office Action further rejects claims 1-14 and 27-29 under 35 U.S.C. §103(a) as being unpatentable over archived web pages of VeroValue (hereinafter "VeroValue") in view of an archived article "Automation Valuation Model – Threat and Opportunity in Automation Today" (hereinafter "Automation Today"). This rejection is moot regarding cancelled claims 1-14 and 27-29, and respectfully traversed to the extent applicable to new claims 38-74.

The Term "AVM" is a Term of Art

The term "AVM" stands for "Automated Valuation Model" (or "Automated Valuation Methodology"). The Uniform Standards of Professional Appraisal Practice ("USPAP") defines an AVM as "*a computer software program that analyzes data using an automated process,*" such as regression, adaptive estimation or neural network programs.¹ Accordingly, it should be appreciated that an AVM value is not a value directly derived by human judgment. That is, it is not an offer for sale derived by a seller of a property, an opinion of worth derived by a real estate agent (or other person) or an offering price derived by a prospective buyer. Further, as stated by the USPAP, while an AVM may be used to develop an appraisal for a given property, "*an AVM is not, by itself, an appraisal.*"²

As Used in the Claims, the Term "AVM" has Patentable Weight

In the December 13, 2006 telephone interview with Supervisory Patent Examiner Weiss, Examiner Weiss clarified the position of the Patent Office regarding as to when terms are to be given patentable weight with regard to database claims. More particularly, Examiner Weiss commented that for a particular form of data placed in a database, the Patent Office was to give patentable weight when the claim language includes functional language related to the term at issue.

In the present context, the term "AVM" is accompanied by functional claim language, such as "*wherein when accessed by a computer, the database enables the computer to perform at least one AVM-related query associated with at least one residential property.*" See, e.g., claim 38. In the December 20, 2006 subsequent telephone interview, Supervisory

¹ Appraisal Standards Board, "Uniform Standards of Professional Appraisal Practice and Advisory Opinions," (2005 Ed.), Advisory Opinion-18, p. 178.

² Id.

Patent Examiner Weiss had stated that the Applicants' proposed functional claim language, such as that now found in claim 38, was sufficient to confer patentable weight for the term "AVM Value."

Accordingly, Applicants respectfully assert that the term "AVM value" as used in the present claims should be given patentable weight such that it is distinguished from an appraisal or any other estimate of worth directly derived by a seller, buyer, real estate agent, tax assessor or any other human agent.

Claims 38-74 Contain Patentable Subject Matter

Applicants assert that it would not have been obvious at the time of the invention to modify VeroValue using the teachings of Automation Today to teach or suggest a database containing records on a plurality of residential properties in a first geographic region, wherein each record of the database includes a first field containing an AVM value of a respective property, as is recited in independent claim 38 and similarly recited in independent claims 66-68 and 72.

VeroValue is part of a web-based advertisement describing various aspects of VeroValue software and various uses for its AVM technology. See, e.g., page 2. As shown on pages 2 and 3, VeroValue's AVM services may be used to generate an estimate for a home's value, provide confidence scoring for a lender, provide estate and tax planning utility for lawyers and accountants, be used by assessors to derive appraisals, and be used by insurance companies for risk assessment. VeroValue does not teach or suggest a database containing records on a plurality of residential properties in a first geographic region, wherein each record of the database includes a first field containing an AVM value of a respective property, as is recited in independent claim 38 and similarly recited in independent claims 66-68 and 72.

To the contrary, as is admitted by the Office Action on page 4, VeroValue "*does not explicitly teach [a] database of property related information.*" Further, a careful review of the VeroValue document shows no application whereby any database containing AVM values is created or used. Thus, VeroValue does not teach or suggest each and every limitation of the claimed invention.

Appraisal Today contains excerpts of an article first published in September 1998 describing the various uses and shortfalls of AVM technology. See, e.g., page 1. As is stated in the Office Action on page 3, Appraisal Today "*teaches automated Valuation Models (AVMs) are the latest hot topic for many appraisers, replacing AMCs (Appraisal Management Companies)*" and that "*AVMs have been around for at least 20 years.*" See, also, page 1. The Office Action then quotes Appraisal Today stating that "*[p]ublic records are the primary data source for all commercially available AVMs*" and that "*[s]ome vendors collect part of their data, particularly if they work only a few states (i.e., creating a database).*" {underline emphasis in Office Action} However, Appraisal Today does not teach or suggest a database containing records on a plurality of residential properties in a first geographic region, wherein each record of the database includes a first field containing an AVM value of a respective property, nor does the Office Action make such an assertion. Thus, Appraisal Today does not provide for the deficiencies of VeroValue.

The Office Action has not established a *prima facie* case of obviousness. To establish a *prima facie* case of obviousness, the prior art references must teach or suggest all the claim limitations, there must be some motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify or combine the reference teachings and there must be a reasonable likelihood of success to combine the references. See MPEP §2143, for example.

As discussed above, the Office Action has not provided prior art references that address each and every limitation of the independent claims. There is no database of AVM values in VeroValue or Appraisal Today. Further, there is no teaching or suggestion to create such a database to allow a user to query the database.

Further, the Office Action has not provided a sufficient motivation under 35 U.S.C. §103(a) to modify either of the VeroValue or Appraisal Today references to form or use AVM databases. While the Office Action asserts on page 4 that "*it would have been obvious ... that VeroValue in view of Appraisal-Today has capability for having a database of data relating to real estate to be able to provide valuations of real estate to their clients,*" this assertion (even assuming that the Office Action is correct in its conclusion) does not address any motivation necessary to form a database containing AVM values. That is, at most Appraisal Today might suggest a database containing real-estate related information that might be used in calculating AVM values, but certainly no searchable database containing AVM values.

The Office Action next asserts that AVM values are "*considered to be non-functional descriptive material that does not distinguish (define) over the applied prior art [s]ince the instant claims are article claims and the type of data claimed is considered to be non-functional*" (citing *In re Gulack*, 217 USPQ 401 (CAFC 1983)). This assertion is incorrect for a number of reasons.

First, Applicants respectfully assert that AVMs *per se* can and do have functionality as is clearly shown by many examples of the VeroValue reference cited by the Office Action. AVM is a term of art that has a specific meaning and function to one of ordinary skill in the art, and their functional value is utilized by assessors, lawyers, accountants, homeowners and bankers. See, e.g., pages 2-3 of VeroValue.

Second, as is discussed in the Detailed Description, a database having AVM values is not only functional, but in certain circumstances can be used to provide unique services

unobtainable without such a database. For example, when a large database of AVM values is made available to a prospective investor of real properties, the prospective investor can perform a number of unique queries, such as a query based on which houses offered for sale in a geographic region represent the best investment opportunities, e.g., which properties appear to have highly motivated sellers. Other functions can include allowing consumers instant access to map-like displays with AVM values superimposed to evaluate which areas are the most affluent. Still further, county planners may use such map-like displays to estimate the costs that condemning a given area, e.g., a number of contiguous blocks, will cost the county when compensating homeowners.

Without exhausting the list of possible functions, unique services or improved services that a database of AVM values might provide, Applicants have provided more than enough examples to demonstrate that a database of AVM values performs at least one function. ***In re Gulack* (cited by the Office Action) requires no more.** See, *In re Lowry*, 32 F.3d 1579 at 1584, 32 USPQ2d 1031 at 1034.

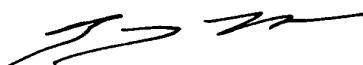
Finally, as Applicants have followed the specific guidance provided by Supervisory Primary Examiner Weiss regarding functional claim language, the present claims adhere both to current patent law and to the policies of Art Unit 3629.

Thus, Applicants assert that all of the claims are directed to patentable subject matter, and respectfully request allowance of new claims 38-74.

In view of the foregoing, it is respectfully submitted that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact the undersigned at the telephone number set forth below.

Respectfully submitted,



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TJP:BYM/scg

Attachment:

Assertion of Small Entity Status

Date: December 28, 2006

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DEPOSIT ACCOUNT USE AUTHORIZATION Please grant any extension necessary for entry; Charge any fee due to our Deposit Account No. 15-0461
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